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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,469	08/01/2003	Michael A. Wack	DEP673-CIP	4800
28/078 7590 04/08/2008 MAGINOT, MOORE & BECK, LLP CHASE TOWER 111 MONUMENT CIRCLE SUITE 3250 INDIANAPOLIS, IN 46204				
EXAMINER RAMANA, ANURADHA				
ART UNIT PAPER NUMBER 3733				
MAIL DATE DELIVERY MODE 04/08/2008 PAPER				

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/633,469

**Applicant(s)**

WACK ET AL.

**Examiner**

Anu Ramana

**Art Unit**

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6-9, 11-18, 20, 22-27, 30-33 and 36-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9, 11-18, 20, 22-27, 30-33 and 36-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 14, 2008 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-9, 11-18, 20, 30-33 and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Bono (US 5,954,722).

Bono discloses a fracture repair system including: a plate 10; a bushing 16 with a spherical exterior surface; a first screw or "pin" or "head attachment component" 18 with a cap portion; and a second screw or "body attachment component" 18 with a cap portion (Figs. 5 and 6, col. 3, lines 48-67, cols. 4-5 and col. 6, lines 1-30).

Regarding claims 13, 16, 17 and 20, Bono discloses plate 10 to have multiple holes with bushings 16 (Fig. 1).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9, 11-18, 20, 22-27, 30-33 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver et al. (WO 01/19267 A1) in view of Wagner et al. (US 6,030,389).

Weaver et al. disclose a fracture repair system including: a first plate 50; a second plate 80; non-locking screws or pins 10 (or "movable body attachment component") with cap portions 12; and locking screws or pins 20 (or "rigid body attachment component") with cap portions 22 wherein combining locking and non-locking screws in the same bone plate provides mixed fixation (Figs. 1-2, 7-8 and 20-21, page 8, lines 12-22 and pages 9-10).

Weaver et al. disclose all elements of the claimed invention except for a bushing with a generally spherical exterior surface.

Wagner et al. teach providing a bushing with a curved or generally spherical exterior surface in a borehole of a plate so that a screw may be rotated and moved to various positions within the borehole (Figs. 2-4 and col. 6, lines 34-67 and col. 7, lines 1-14).

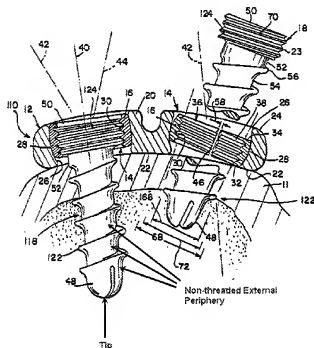
Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a bushing with a generally spherical exterior surface, as taught by Wagner et al., in a borehole of either of the Weaver et al. plates 50, 80 in the system of the combination of Weaver et al. and Wagner et al., to enable rotation and movement of a screw to various positions within the borehole.

### ***Response to Arguments***

Applicant's arguments submitted under "REMARKS" in the response filed on January 14, 2008 have been fully considered.

Applicant's arguments with respect to the rejections of claims 1-4, 6-9, 11-18, 20 and 30-33 under 35 U.S.C. 102(b) over Bono are not persuasive for the following reasons.

Bono clearly discloses a pin having a cylindrical shaft with a non-threaded external periphery terminating in a tip. See marked up Figure up Fig. 6 from Bono below.

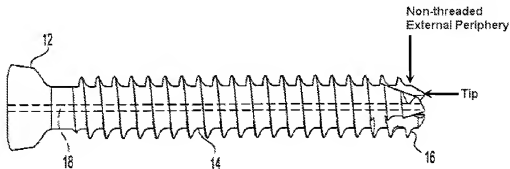


Applicant's claim language requires some portion of the cylindrical shaft of the pin to have a non-threaded external periphery.

It is also noted that the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983).

Applicant's arguments with respect to the rejections of claims 7-9, 11-18, 20, 22-27 and 30-33 under 35 U.S.C. 103(a) over Bono are not persuasive for the following reasons.

Weaver et al. disclose a pin having a cylindrical shaft with a non-threaded external periphery terminating in a tip. The Examiner reiterates that Applicant's claim language requires some portion of the cylindrical shaft of the pin to have a non-threaded external periphery. See marked up Figure 1 from Weaver et al. on the following page.



In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR

March 31, 2008

/Anu Ramana/  
Primary Examiner, Art Unit 3733